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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1951.

No. 435

JOHN LEE,

Petitioner,

VS.

EULA LEE MATTHEWS FINLEY, and
HENRY P. WILLIMON,

Respondents.

REPLY OF JOHN LEE TO BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

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Of Counsel.

CHAMPLIN-SHEALY COMPANY, CHICAGO 365

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To the Honorable Fred A. Vinson, Chief Justice of the Supreme Court of the United States and the Associate Justices of the Supreme Court of the United States:

(Emphasis ours when used in this Petition.)

We believe the only necessity for a short reply to the brief for respondents in opposition to the Petition For Writ of Certiorari is to call to the attention of this Honorable Court the failure of the respondents to answer the three questions presented or to deny the fact that the present counsel for the respondents appeared in the Superior Court

of Cook County and induced the court to enter a decree reciting that, "This cause coming on to be heard upon . . . the report of the Master In Chancery to whom this cause was heretofore referred to take the proofs herein, etc." . . . When in fact the said attorney for the respondents who prepared the draft of the decree and presented the same to the court for entry in said cause, well knew or ought to have known that no Master's report had been filed at the time he presented the draft of the decree for the signature of the court and was not filed until several months after the entry of the decree. Whether or not counsel intended to mislead the trial court by the misstatement that a report of the Master In Chancery was on file is not explained by the respondents. The Master's report had attached thereto any proofs which might have been taken before the Master and therefore no proofs were on file at the date of the entry of the decree. This fact was known to the counsel who presented the draft of the decree to the court and was a misstatement of the record.

The same counsel for the respondents filed in the Supreme Court a paper which he entitled "Additional Abstract of Record" which purported to present certain evidence not on file in the trial court at the time the decree was entered, at the time the appeal was taken and was not a part of the record on appeal. No date was shown by the so called "Additional Abstract of Record" as to the time the matters contained therein were filed in the trial court, although counsel for the respondents well knowing that the matters contained in the so called "Additional Abstract of Record" were not on file in the cause at the time the draft of the decree was presented to the trial judge and signed by him, or at the time the appeal was taken and the filing of the so called "Additional Abstract of Record" was an imposition on the Supreme Court as stated in the Petition For Writ of

Certiorari. Counsel for the respondents well knew or ought to have known that it was a misrepresentation, whether willful or negligent in presenting matters to the Supreme Court which were not a part of the record at the time the appeal was perfected in the trial court and were not placed on file until many months after the appeal had been perfected in the trial court and were not placed on file until many months after the appeal had been perfected.

The respondents do not answer these misrepresentations to the trial court and the Supreme Court although it is their duty not to misrepresent the record or any facts in the case to the trial court or the Supreme Court as the courts are dependent upon the integrity of the members of the bar to assist them in the administration of justice, and we believe that the record in support of the Petition For Writ of Certiorari clearly shows such conduct on the part of the respondents as to merit the condemnation of this court.

It is evident that the decree entered in the trial court and the opinion of the Supreme Court of Illinois were induced by the conduct of the respondents in a misrepresentation to the courts of the state of the record at the time the decree was entered in the trial court and the opinion was rendered in the Supreme Court.

Such misrepresentation as shown by the conduct of the respondents caused the trial court to enter a decree without any evidence and upon a misapprehension that a Master's report was on file, and cause the Supreme Court to render its opinion upon the misapprehension that the matters contained in the so called "Additional Abstract of Record" were a part of the record at the time the appeal was perfected in the trial court. The cases cited under Point 3, p. 34, of the Brief in support of Petition For Writ of Certiorari in the instant case conclusively show that the

Master's report and proofs attached thereto filed many months after the perfection of the appeal, were not a part of the record on the appeal and that the conduct of the respondents in failing to inform the courts of the true state of the record at the time the appeal was perfected, misled the courts and the decree of the Superior Court of Cook County and the judgment and opinion of the Supreme Court of Illinois, based upon such misinformation, caused solely by the conduct of the respondents, did deny to the petitioner the due process of law, *Townsend* v. *Burke, Warden,* 334 U. S. 736, 740; and denied the petitioner the equal protection of the laws in this, that the settled law of Illinois, supported by an unbroken line of decisions, is well stated in *Baird* v. *Powers,* 131 Ill. 66, 67, where the court, in reversing a decree and sustaining the proposition of law, that because, no facts whatever were found in the decree and no evidence was preserved in the record, states:

> "It has been held many times in this court, that where the evidence is not contained in depositions duly taken and filed in the case, and there is no report of a master in chancery, embodying the evidence taken and heard on the trial, on file in the case, it is incumbent on the party seeking to sustain the decree to preserve the evidence in the record, either by a recital in the decree of the facts proved, or by a bill of exceptions, or certificate of evidence reciting the evidence given on the hearing, filed in the case, and thus made part of the record, and that when no evidence has been preserved sustaining the decree, in any of the modes indicated, it must be reversed. (Citing cases.) * * * The decree is reversed and the cause remanded."

In 28 U. S. C. A., Sec. 1254, it is provided that application may be made by certiorari from "all courts of appeals" in certain cases. The Supreme Court of Illinois is a court of appeals. Rule 38 of the Rules of the Supreme Court provides that application for certiorari may be made from the

final judgments of the highest court of the states and that the jurisdictional statement should contain certain allegations. The jurisdictional statement in this case complies with Rules 12 and 38 of this Court.

Title 28 U. S. C. A., paragraph 1257 also provides that applications for certiorari may be made for the review of final judgments in the highest courts of the state. The petitioner respectfully submits that if the jurisdictional statement contains the proper substance as required by Rule 12, that this Court may consider the substance rather than the form.

The respondents do not attempt to answer or explain the conduct herein complained against and thereby admit the truth of the charge.

The jurisdiction of this court is invoked under the proper section of the judicial code and the rule of the Supreme Court of the United States.

Wherefore, petitioner prays that his Petition for Writ of Certiorari be granted and the relief therein prayed for afforded him.

Respectfully submitted,

JOHN LEE, Petitioner,
By RICHARD E. WESTBROOKS,
His Attorney.

Chicago, Illinois, December 24, 1951.